



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

December 19, 1952

Hon. A. K. Stewart
County Attorney
Montgomery County
Conroe, Texas

Opinion No. V-1556

Re: Validity of a construction contract let by the Commissioners' Court in an amount in excess of the unobligated balance in the permanent improvement fund plus the amount of a bond issue voted for this construction project.

Dear Sir:

Your request reads as follows:

"On October 13, 1952, the Commissioners' Court of Montgomery County, Texas, entered into a construction contract for an addition to the county hospital in the amount of \$581,491.00. On this date the county had on hand unencumbered funds available in the amount of \$570,820.65. However, based on experience for many previous years, the Commissioners' Court reasonably anticipated that it would collect \$10,670.35 in delinquent taxes and other unencumbered and unappropriated revenues, exclusive of the 1952 tax levy.

"Question: Is the contract valid?"

You are more specifically concerned with whether the contract constitutes a debt in violation of Section 7 of Article XI of the Constitution of Texas since all statutory provisions concerning the awarding of the contract and the expenditure of money have been complied with.

In answering your question we shall assume that the anticipated delinquent tax collections and other unencumbered and unappropriated revenues referred to in your request include only revenues which are properly payable to the county's Permanent Improvement Fund.

Article XI, Section 7 of the Constitution of Texas provides in part:

"But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent (2%) as a sinking fund; and the condemnation of the right of way for the erection of such works shall be fully provided for."

The term "debt" as used in the above quoted constitutional provision has been uniformly held by the courts of this State to mean "any pecuniary obligation imposed by contract, except such as were, at the date of the contract, within the lawful and reasonable contemplation of the parties, to be satisfied out of the current revenues for the year, or out of some fund then within the immediate control of the corporation." Stevenson v. Blake, 131 Tex. 103, 113 S.W.2d 525, 527 (1938); Bexar County v. Hatley, 136 Tex. 354, 150 S.W.2d 980 (1941); Sumerlin v. Fowler, 229 S.W.2d 75 (Tex.Civ.App. 1950); McNeill v. City of Waco, 89 Tex. 83, 33 S.W. 322 (1895); Foard County v. Sandifer, 105 Tex. 420, 151 S.W. 523 (1912).

An excellent discussion of Section 7 of Article XI is found in McNeill v. City of Waco, 89 Tex. 83, 33 S.W. 322 (1895), wherein the Supreme Court stated:

"Since the inhibition against the 'creation' or 'incurring' of a 'debt,' without the 'provision,' is universal, it is of vital importance to determine the meaning of the word 'debt' as used in the constitution. The word has no fixed, legal signification, as has the word 'contract,' but is used in different statutes and constitutions in senses varying from a very restricted to a very general one. Its meaning, therefore, in any particular statute or constitution, is to be determined by construction, and decisions upon one statute or constitution often tend to confuse rather than aid in ascertaining its signification in another relating to an entirely

different subject. These constitutional provisions were intended as restraints upon the power of municipal corporations to contract that class of pecuniary liabilities not to be satisfied out of the current revenues or other funds within their control lawfully applicable thereto, and which would therefore, at the date of the contract, be an unprovided-for liability, and properly included within the general meaning of the word 'debt.' They have no application, however, to that class of pecuniary obligations in good faith intended to be, and lawfully, payable out of either the current revenues for the year of the contract or any other fund within the immediate control of the corporation. Such obligations being provided for at the time of their creation, so that in the due course of the transactions they are to be satisfied by the provisions made, it would be an unreasonable construction of the constitution to hold them debts, within its meaning, so as to require the levy of a wholly unnecessary tax upon the citizen. Thus, a warrant drawn against the current revenues of the year for one of the ordinary expenses of the corporation for such year, when all the claims for ordinary expenses for that year do not exceed such revenues, or a contract entered into for the making of any public improvement authorized by law, e.g. the building of a courthouse or jail, and obligating the corporation to pay therefor, there being funds within its immediate control lawfully applicable thereto sufficient, and in good faith contemplated by the contracting parties to be used in payment thereof when due, are not debts, within the meaning of such constitutional provisions requiring the making of provision for the interest and sinking fund. The payment of such claims being lawfully provided for, in such way that their satisfaction in the due course of business is reasonably certain, they are, in legal contemplation, so far satisfied as to be considered as not contemplated by the constitutional provisions, though it may result, from some cause not

provided against by the law, such as failure to collect the taxes, robbery, embezzlement, or wrongful diversion of the funds, that they are not paid from the contemplated sources."

Under the facts presented, the obligation created by the contract is to be satisfied out of the reasonably anticipated current revenues available for the year 1952 and no part of the 1952 tax levy (available for 1953 expenditures) is to be used to satisfy the obligation. It is therefore our opinion that the contract does not create a debt in violation of Section 7 of Article XI of the Constitution of Texas.

SUMMARY

An obligation created by a contract to be satisfied out of reasonably anticipated current revenues does not constitute a debt within the meaning of Section 7 of Article XI of the Constitution of Texas. Stevenson v. Blake, 131, Tex. 103, 113 S.W.2d 525 527 (1938); Bexar County v. Hatley, 136 Tex. 354, 150 S.W.2d 980 (1941); Sumerlin v. Fowler, 229 S.W.2d 75 (Tex.Civ.App. 1950); McNeill v. City of Waco, 89 Tex. 83, 33 S.W. 322 (1895) and Foard County v. Sandifer, 105 Tex. 420, 151 S.W. 523 (1912).

Yours very truly,


APPROVED:

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